

REMARKS

Claims 1-27 are pending herein. Claims 9-17 and 21-25 have been withdrawn from consideration. Therefore, Claims 1-8, 18-20 and 26-27 are under review and consideration by the Examiner.

1. In the Office Action, the Examiner requested that the continuing information in the preamble of the specification be updated. The Applicants respectfully request clarification since paragraph [0001] already refers to claiming priority on prior U.S. Provisional Application S.N. 60/483,121, filed June 30, 2003.

2. The title of the invention and the abstract of the disclosure were objected to. In response, substitute title and the abstract are provided herewith. Reconsideration and withdrawal of these objections are therefore respectfully requested.

3. Claims 1-8 were rejected under 35 U.S.C. §112, second paragraph. Claims 1 and 7 have been appropriately amended and are believed to be in full compliance with §112. Therefore, it is respectfully requested that the rejection of Claims 1-8 under 35 U.S.C. §112, second paragraph, be withdrawn.

4. Claims 1-8, 18-20 and 26-27 were rejected under 35 U.S.C. §102(a) over Shi et al. publication ("Lactadherin inhibits enzyme complexes of blood coagulation by competing for phospholipid-binding sites", Blood, 1 April 2003, Vol. 101, No. 7, pp. 2628-2636).

It is respectfully submitted that the inventors of the present invention are the sole inventors of the subject matter relied on by the Examiner in the Shi et al. publication to reject Claims 1-18, 18-20 and 26-27 under 35 U.S.C. §102(a). In this regard, attached hereto is a Declaration of the inventors of the present application, Gary E. Gilbert, Jialan Shi, Christian W. Heegaard, and Jan T. Rasmussen, under 37 CFR §1.132. Therefore, it is respectfully submitted that the Shi et al. publication cannot be used as a *de jure* prior art reference under 35 U.S.C. §102(a). See MPEP §715.01(c).

Accordingly, it is respectfully requested that the rejection under 35 U.S.C. §102(a) over Shi et al. publication be withdrawn.

It is further respectfully submitted that Claims 1-8 were only rejected over Shi et al. publication, which, as noted above, is not a valid prior art reference. Therefore, it is respectfully submitted that Claims 1-8 are now allowable.

5. Claims 18-20 and 26-27 were rejected under 35 U.S.C. §103(a) over Albert (U.S. Patent Publication No. 2006/0257431). For the reasons discussed below, this rejection is respectfully traversed.

In support of this rejection, the Examiner stated that Albert et al. teach in paragraph [0196] that lactadherin is a major glycoprotein of the human milk fat globule membrane.

It is respectfully submitted that Albert et al. merely disclose their belief that lactadherin, a major glycoprotein of the human milk fat globule membrane, has

several properties “which suggest [that] it may be a component of [] a molecular bridge,” between apoptotic cells and dendritic cells. See paragraph [0196] of Albert et al. (emphasis added). There is no teaching or suggestion, or supporting data in Albert et al. indicating that lactadherin binds specifically to a phospholipid, and more specifically to phosphatidylserine or phosphatidyl-L-serine. At best, Albert et al. speculate binding between lactadherin and membranes of apoptotic cells.

On the other hand, Claims 18-20 and 26-27 are directed to detecting the presence of a phospholipid by using lactadherin as a binding agent.

Therefore, it is respectfully submitted that one of ordinary skill in the art would not learn from Albert et al. to use lactadherin, or a claimed derivative thereof, to detect the presence of a phospholipid, specifically phosphatidylserine or phosphatidyl-L-serine, in a biological material, absent the teaching of the present invention.

Accordingly, it is respectfully submitted that Claims 18-20 and 26-27 are not obvious over Albert et al.

CONCLUSION

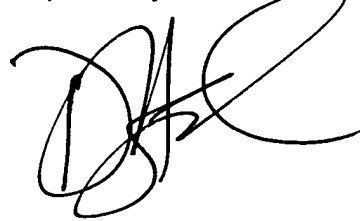
For the foregoing reasons, it is respectfully submitted that Claims 1-8, 18-20 and 26-27 contain allowable subject matter. Withdrawal of all the rejections and allowance of these claims are earnestly solicited.

Appl. No. 10/562,269
Amdt. dated September 14, 2009
Reply to Office Action of April 16, 2009

It is believed that no additional fee is due for this submission. Should that determination be incorrect, however, the Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment, to our Deposit Account No. 01-0433, and notify the undersigned in due course.

Should the Examiner have any questions or wish to discuss further this matter, please contact the undersigned at the telephone number provided below.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D. Agarwal', written over a horizontal line.

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